

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GREGORY GRAHAM #19314,

Plaintiff,

No. 1:16-cv-00149

v

HON. ROBERT J. JONKER

MATTHEW TURNER, DOUGLAS  
MURLAND, and HEARING  
INVESTIGATOR McDONALD,

MAG. PHILLIP J. GREEN

Defendants.

---

Daniel E. Manville  
MSU College of Law  
Attorney for Plaintiff  
P.O. Box 1570  
East Lansing, MI 48826  
(517) 432-6866  
daniel.manville@law.msu.edu  
P39731

---

Kyla L. Ragatzki  
Assistant Attorney General  
Attorney for Defs. Turner and Murland  
Michigan Dep't of Attorney General  
State Operations Division  
P.O. Box 30754  
Lansing, MI 48909  
(517) 335-7573  
barrancok@michigan.gov  
P81082

---

**Exhibit I**

(MDOC Policy Directive 04.05.110)

<p style="text-align: center;">MICHIGAN DEPARTMENT OF CORRECTIONS</p> <p style="text-align: center;"><b>POLICY DIRECTIVE</b></p> <p style="text-align: center;"><b>(EXEMPT)</b></p>	EFFECTIVE DATE 09/06/2013	NUMBER 04.05.110
	SUPERSEDES 04.05.110 (10/01/09)	AUTHORITY MCL 791.203, 800.41
SUBJECT USE OF FORCE (EXEMPT)	PAGE 1 OF 5	

**POLICY STATEMENT:**

Employees are authorized to use force in the performance of their duties as set forth in this policy.

**RELATED POLICIES:**

01.05.120 Critical Incident Reporting  
 03.03.100 Firearms and Chemical Agents  
 04.05.112 Managing Disruptive Prisoners

**POLICY:**GENERAL INFORMATION

- A. Employees have a duty to protect themselves, other staff, the public and offenders who are threatened by the unlawful actions of others. Employees also are required to prevent escapes, maintain order and control within the facility and to protect State property. Employees shall use all necessary and suitable means to perform these duties and responsibilities, including the use of physical force where appropriate and within the requirements of this policy. Force shall not be used for vindictive or retaliatory purposes. The use of excessive or unreasonable force may lead to disciplinary action against the employee, civil suit, and criminal prosecution.
- B. All employees have a responsibility to come to the aid of another employee or an offender who is in danger. The best way for staff not trained in prisoner control techniques to assist include the following:
1. An immediate call for assistance through use of a body alarm, radio, telephone, or any other available means;
  2. Verbal commands to the individual(s) to cease and disperse;
  3. Identification of person(s) involved.
- C. Notwithstanding Paragraph B, if there is an immediate risk of death or serious injury, all employees shall provide physical assistance to the extent possible.

AMOUNT OF FORCE

- D. Employees are authorized to use as much force as is reasonably necessary to perform their duties and to protect themselves and others from harm. However, the amount of force which is reasonable depends upon the totality of circumstances of the particular incident. The controlling factors are:
1. The degree of force threatened or used by the individual, including whether

DOCUMENT TYPE POLICY DIRECTIVE (EXEMPT)	EFFECTIVE DATE 09/06/2013	NUMBER 04.05.110	PAGE 2 OF 5
--	------------------------------	---------------------	-------------

s/he possesses a weapon, such as a knife or any object which could be used to cause physical injury;

2. The employee's reasonable perception of the danger of death or serious physical injury;
  3. The alternatives available to control the situation or defuse the conflict without the use of force.
- E. The appropriateness of the type and amount of force used by the employee (e.g., the kind of weapon used, the area of the body struck) will be examined using the preceding factors. Only force which is reasonable in responding to the situation is permissible.

#### ALTERNATIVES TO USE OF FORCE

- F. Employees must always remain alert to the development of dangerous situations and violent confrontations. To avoid such situations, employees must be aware of their surroundings at all times, including, whenever possible, the history of offenders with whom they are in contact, the presence or absence of other staff in the immediate area, the avenues of escape in any setting, and the available means of summoning assistance. Personal safety, and the safety of other staff, offenders, visitors, and members of the public, must be a primary concern of employees at all times.
- G. If potentially violent confrontations develop, employees must be aware of and use any available alternatives to the use of force which do not conflict with their duties and responsibilities. Such alternatives include:
1. The use of verbal and non-verbal de-escalation techniques to defuse a potentially violent situation;
  2. Waiting for the offender to "cool down" if this can be safely done; e.g., a prisoner who is disruptive but is confined and is not physically harming himself/herself, or threatening to do so, and is not physically harming another person or causing undue disruption to others;
  3. Calling additional staff to present a show of force;
  4. The use of evasive tactics, followed by retreat and the summoning of assistance.

#### DEADLY FORCE

- H. Deadly force is that degree of force which is likely to result in death or serious physical injury. Such force may be used only as a last resort, when there are no safe and reasonable alternatives to accomplish the objective. Deadly force is to be avoided whenever possible and, when it cannot be avoided the force used should be appropriate for the situation. Knives and firearms are always considered to be instruments of deadly force; however, a blow or hold to the head, neck, throat, or other vulnerable area of the body also may be deadly force.
- I. If gunfire is used, it shall be directed with the intent to stop the person or persons at whom the gunfire is directed. A verbal warning should precede gunfire directed at a person, if time and circumstances permit such warnings.
- J. Deadly force may be used only in the following situations:

DOCUMENT TYPE POLICY DIRECTIVE (EXEMPT)	EFFECTIVE DATE 09/06/2013	NUMBER 04.05.110	PAGE 3 OF 5
--	------------------------------	---------------------	-------------

1. To prevent death or serious physical injury to self, other staff, offenders, or other persons who are threatened;
2. To prevent the taking of hostages;
3. To prevent the escape of any prisoner from a correctional facility, including while being transported to or from a correctional facility;
4. To prevent major damage to State property during a disturbance within a facility if it is reasonably believed that the damage may cause death or serious physical injury to any person. For example, if prisoners are attempting to burn a building and there is any possibility that the building is occupied or that the fire may spread to an occupied building, deadly force may be used. In these situations, use of deadly force must be authorized by a shift commander or higher authority;
5. To prevent prisoners from unlocking other prisoners without authorization if it is reasonably believed that the unlocking may result in death or serious physical injury to others. Such a belief may be based upon the words and actions of the prisoners, the security level of the institution, and any other factors deemed relevant by corrections staff. In this instance, the use of deadly force must be authorized by a shift commander or higher authority.

#### WARNING SHOTS

- K. Warning shots shall only be used in a situation which occurs inside the security perimeter of an institution or to prevent an escape or storming of the security perimeter from the outside, if the institution is located in an area where a warning shot can be fired safely. All institutions with gun towers or turrets shall have warning shot target zones installed and maintained consistent with requirements set forth in the Department's Ordnance Manual. Wardens shall ensure target zones are identified for all other areas within their respective institutions at which armed staff may be strategically placed during a disturbance (e.g., on a roof).
- L. A warning shot must be directed in a manner which avoids risk to those not involved in the incident and presents the least possible risk to the prisoner(s) being warned. For example, a warning shot may be aimed into the ground or in another direction where there is clearly no one present. However, at times it may be appropriate to aim warning shots into the ground directly in front of a person or persons who are advancing on a target, if this is the only effective means of stopping them short of shooting to stop.
- M. As set forth in PD 03.03.100 "Firearms and Chemical Agents", a Firearms Use Evaluation form (CAJ-238) shall be completed whenever a firearm is discharged, including when going to or returning from work, except as required during training, qualification, or range practice. Any use, including discharge, of a firearm shall be reported as set forth in PD 01.05.120 "Critical Incident Reporting". Absconder Recovery Unit staff also shall report the use of a firearm as required by PD 06.01.130 "Absconder Recovery Unit". All Firearms Use Evaluation forms shall be forwarded with any written report required by PD 01.05.120 and PD 06.01.130 as set forth in those policies, and a copy sent to the Administrator of the Office of New Employee Training Section.
- N. Whenever a Firearms Use Evaluation form is completed, as a result of a warning shot or discharge of firearm not resulting in injury or death, a review will be conducted by the Warden/designee or FOA Administrator as appropriate. For Regional CFA staff, Central

DOCUMENT TYPE POLICY DIRECTIVE (EXEMPT)	EFFECTIVE DATE 09/06/2013	NUMBER 04.05.110	PAGE 4 OF 5
--	------------------------------	---------------------	-------------

Office staff, Corrections Transportation Officers, and ARU staff a review will be conducted by the CFA Operations Administrator. The Warden/designee, FOA Administrator, or CFA Operations Administrator shall review the form and any other relevant information to determine whether discharge of the firearm was appropriate. The Warden/designee, FOA Administrator, or CFA Operations Administrator shall prepare a written report for the appropriate Deputy Director setting forth their findings regarding the incident.

- O. An employee who discharges a firearm not resulting in injury or death may be placed on an assignment which requires the use of firearms only after the Warden/designee or FOA Administrator has reviewed the Firearms Use Evaluation form and any other relevant information and has determined the discharge of the firearm was appropriate.
- P. Any discharge of a firearm resulting in injury or death shall require a Shoot Review Team, appointed by the Director and chaired by the appropriate Deputy Director, to review the incident. The Shoot Review Team shall review the Firearms Use Evaluation form, the critical incident report, and any other relevant information to determine whether discharge of the firearm was appropriate. The Shoot Review Team shall prepare a written report for the Director setting forth its findings regarding the incident.
- Q. An employee who discharges a firearm causing injury or death shall not be placed on an assignment which requires the use of firearms until the Director has reviewed the report of the Shoot Review Team and determined that the use of firearms was appropriate. The employee shall be immediately referred to the Employee Services Program or other appropriate counseling services.
- R. Only those employees authorized by PD 03.03.100 "Firearms and Chemical Agents" may carry and use firearms in the performance of their duties.

#### NON-DEADLY FORCE

- S. Non-deadly force is that degree of force which is not likely to cause death or serious physical injury; e.g., use of chemical agent, specialty impact device, or electronic control device; certain self-defense and prisoner control techniques or strikes to areas of the body unlikely to result in serious physical injury. Only those employees who have completed Department training in prisoner control techniques are authorized to use such techniques.
- T. Reasonable non-deadly force may be used in the following situations:
  - 1. Self-defense;
  - 2. Defense of others;
  - 3. Prevention of a suicide;
  - 4. Maintaining order and control in a facility, including prevention of damage to State property;
  - 5. Prevention of escape from any security level;
  - 6. Prevention of the commission of a felony by an offender;
  - 7. To effect a lawful arrest.

#### RECORDING AND REPORTING USE OF FORCE



DOCUMENT TYPE POLICY DIRECTIVE (EXEMPT)	EFFECTIVE DATE 09/06/2013	NUMBER 04.05.110	PAGE 5 OF 5
--	------------------------------	---------------------	-------------

- U. If there is an opportunity to plan strategy beforehand in dealing with disruptive or violent prisoners, an audio-visual recording of the incident shall be made, including staff efforts to defuse the situation without the use of force. In CFA and the Reentry Facilities, the Warden or designee shall view the audio-visual recording within one business day after the recording was made to ensure all policy requirements were followed. The recordings shall be retained in accordance with the Department's Record Retention and Disposal Schedule or, if not addressed in the schedule, for a minimum of three years. However, when it is known that a lawsuit has been filed or an investigation is currently underway regarding a specific incident, the recording shall be retained until completion of the investigation or litigation, including appeal. Questions regarding pending litigation shall be directed to the Litigation Section of the Office of Legal Affairs, Budget and Operations Administration.
- V. Any employee who uses or observes the use of force by another employee shall report the incident to his/her supervisor immediately and as required in PD 01.05.120 "Critical Incident Reporting"; the use of an electronic control device by the Absconder Recovery Unit shall be reported as set forth in PD 06.01.130 "Absconder Recovery Unit". The report shall include a description of the amount and kind of force used, the exact holds used, if blows were delivered, methods of restraint, areas of the body struck, and whether a weapon was used; if a weapon was used, the kind of weapon(s) used also shall be included. The report also must cover the presence of others, including offenders, employees, and others, and describe their participation in the incident. The report also shall include verbal orders given before or during the incident, any conversation, and whether profanity or racial epithets were used by employees, offender, or others.
- W. Failure of any employee to report accurately and completely any incident where force was used may result in disciplinary action.

#### PROCEDURES

- X. Wardens and the FOA Deputy Director shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive; this shall be completed within 60 calendar days after the effective date of the policy directive. This requirement includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Local procedures shall not conflict with procedures issued by the Director.

#### AUDIT ELEMENTS

- Y. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

APPROVED: DHH 9/5/13